

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

FILED
JOHN P. HEHMAN
CLERK

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
WEST DIV. CINCINNATI

ROBERT RYAN LAPINSKI
on behalf of himself and all other persons
similarly situated, known and unknown
[REDACTED]

and

JASON HAMEL
on behalf of himself and all other persons
similarly situated, known and unknown
[REDACTED]

and

STEVEN KENDE
on behalf of himself and all other persons
similarly situated, known and unknown
[REDACTED]

Plaintiffs,

v.

JEFF RUBY CULINARY
ENTERTAINMENT, INC.
700 Walnut Street, Suite 200
Cincinnati, OH 45202

Also Serve Registered Agent:

Corporate Statutory Services, Inc.
255 E. 5th Street, Suite 2400
Cincinnati, OH 45202

and

CASE NO. **1:13 CV 595** *EH*

(Judge **D. BLOTT**)

COMPLAINT AND JURY DEMAND

JEFF RUBY



and

JEFF RUBY STEAKHOUSE, LLC
700 Walnut Street
Cincinnati, OH 45202

Also Serve Registered Agent:

Corporate Statutory Services, Inc.
255 E. 5th Street, Suite 2400
Cincinnati, OH 45202

CARLO & JOHNNY'S, LTD.
9769 Montgomery Road
Montgomery, OH 45242

Also Serve Registered Agent:

Corporate Statutory Services, Inc.
255 E. 5th Street, Suite 2400
Cincinnati, OH 45201

JOHN DOE 1-10
Names and Addresses Currently Unknown

and

ABC CORPORATION 1-10
Names and Addresses Currently Unknown

Defendants.

Plaintiffs, Robert Ryan Lapinski, Jason Hamel and Steven Kende, on behalf of themselves and all other persons similarly situated, known and unknown, for their Complaint against Defendants Jeff Ruby Steakhouse, LLC, Carlo & Johnny's, Ltd., and Jeff Ruby a/k/a Jeffrey Ruby (hereinafter collectively referred to as "Defendants") state as follows:

I. INTRODUCTION

1. This lawsuit arises under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 et seq., by Robert Ryan Lapinski, Jason Hamel and Steven Kende on behalf of themselves and all other current and former waitstaff employees at the steakhouse restaurants Jeff Ruby's Steakhouse Cincinnati, and Carlo & Johnny owned and operated by Defendants. As set forth below, Defendants had a longstanding policy and practice throughout their restaurants under which their waitstaff employees (1) have not been permitted to retain all of their tips, (2) were required to "tip out" managers and other employees who do not regularly and customarily receive tips, (3) received less than the permissible standard minimum wage due to Defendants improperly taking a "tip wages credit" against the minimum wage for these employees and (4) were not provided the required notice regarding their employers' intention to take a "tip wage credit." In or around August, 2012, Defendants discontinued said policy or practice. On behalf of themselves and all others similarly situated who may choose to opt-in to this action, Plaintiffs Robert Ryan Lapinski, Jason Hamel and Steven Kende now seek restitution for the tips they have not been permitted to retain, as well as the portion of minimum wage that they did not receive in base pay, liquidated damages, attorneys' fees and costs, and any other damages to which they may be entitled under law or equity. Plaintiffs also assert a claim for unjust enrichment arising from Defendants' illegal retention of their waitstaff employees' earned tips.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over Plaintiffs' federal claims pursuant to 28 U.S.C. § 1331 and may assume supplemental jurisdiction over Plaintiffs' state law claims on the basis of 28 U.S.C. § 1367.

3. Venue with the Court is appropriate pursuant to 28 U.S.C. § 1391(b) because all or a substantial part of the events or omissions complained of giving rise to the claims occurred within this judicial district.

III. PARTIES

4. Plaintiff Robert Ryan Lapinski is a citizen of the United States who resides in Hamilton County, Ohio. Mr. Lapinski was employed by Jeff Ruby Steakhouse, LLC as a member of the waitstaff who performed various non-managerial and non-administrative duties, such as serving customers and bartending, at Jeff Ruby's Steakhouse Cincinnati from March 2010 until June 2013. Mr. Lapinski was not exempt from the minimum wage provisions of the FLSA.

5. Plaintiff Jason Hamel is a citizen of the United States who resides in Kenton County, Kentucky. Mr. Hamel was employed by Carlo & Johnny's, LLC as a member of the waitstaff who performed various non-managerial and non-administrative duties, such as serving customers and bartending, at Carlo & Johnny from 2002 until February 2013. Mr. Hamel was not exempt from the minimum wage provisions of the FLSA.

6. Plaintiff Steven Kende is a citizen of the United States who resides in Dade County, Florida. Mr. Kende was employed by Carlo & Johnny's, LLC as a member of the waitstaff who performed various non-managerial and non-administrative duties, such as serving customers and bartending, at Carlo & Johnny from 2001 until 2003 and from 2005 until April 2013. Mr. Kende was not exempt from the minimum wage provisions of the FLSA.

7. The class of similarly situated employees consists of all current and former non-exempt employees of Defendants, who as members of the waitstaff, were required by

Defendants' mandatory "tip pool" policy or practice to "tip out" managers and other employees who do not regularly and customarily receive tips.

8. Defendant Jeff Ruby Culinary Entertainment, Inc. is an Ohio corporation with its principal place of business in Cincinnati, Ohio. To the best of Plaintiffs' knowledge, information and belief, Jeff Ruby Culinary Entertainment, Inc. has at all times relevant herein provided management, policies, and had control over significant aspects of the day-to-day operations of the restaurants known as Jeff Ruby's Steakhouse Cincinnati and Jeff Ruby's Carlo & Johnny. At all times relevant herein, Defendant Jeff Ruby Culinary Entertainment, Inc. was engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. § 203(s)(1)(A) and was an "employer" within the meaning of the FLSA.

9. Defendant Jeff Ruby is a citizen of the United States who resides in Hamilton County, Ohio. To the best of Plaintiffs' knowledge, information and belief, Defendant Jeff Ruby is the owner, president, manager, member, and/or managing member of Defendants Jeff Ruby Culinary Entertainment, Inc., Jeff Ruby's Steakhouse, LLC and Carlo & Johnny's, Ltd., has significant ownership interest in said corporations, had control over significant aspects of said corporations' day-to-day operation of the restaurants known as Jeff Ruby's Steakhouse Cincinnati and Jeff Ruby's Carlo & Johnny. At all times relevant hereto, Defendant Jeff Ruby was an "employer" within the meaning of the FLSA.

10. Defendant Jeff Ruby Steakhouse, LLC is an Ohio limited liability company with its principal place of business in Cincinnati, Ohio. To the best of Plaintiffs' knowledge, information and belief, Jeff Ruby Steakhouse, LLC has at all times relevant herein owned and operated the restaurant known as Jeff Ruby Steakhouse Cincinnati, was engaged in commerce or

in the production of goods for commerce within the meaning of 29 U.S.C. § 203(s)(1)(A), and was an “employer” within the meaning of the FLSA.

11. Defendant Carlo & Johnny’s, Ltd., is an Ohio limited liability company with its principal place of business located in Montgomery, Ohio. To the best of Plaintiffs’ knowledge, information and belief, Carlo & Johnny’s, Ltd. has at all times relevant herein owned and operated the restaurant known as Jeff Ruby’s Carlo & Johnny, was engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. § 203(s)(1)(A), and was an “employer” within the meaning of the FLSA.

12. Defendants John Doe 1-10 are individuals whose identities and addresses are currently unknown but will be discovered once Plaintiffs have had a reasonable opportunity to engage in discovery. Defendants John Doe 1-10 are liable to Plaintiffs for damages. Some or all of Defendants John Doe 1-10 have at all times relevant herein owned or operated one or more of the restaurants known as Jeff Ruby’s Steakhouse Cincinnati, and Jeff Ruby’s Carlo & Johnny, were engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. § 203(s)(1)(A), and were an “employer” within the meaning of the FLSA.

13. Defendants ABC Corporation 1-10 are companies whose identities and addresses are currently unknown but will be discovered once Plaintiffs have had a reasonable opportunity to engage in discovery. Defendants ABC Corporation 1-10 are liable to Plaintiffs for damages. Some or all of Defendants ABC Corporation 1-10 have at all times relevant herein owned or operated one or more of the restaurants known as Jeff Ruby’s Steakhouse Cincinnati, and Jeff Ruby’s Carlo & Johnny, were engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. § 203(s)(1)(A), and were an “employer” within the meaning of the FLSA.

IV. STATEMENT OF THE CASE

14. Defendants own and operate Jeff Ruby's Steakhouse Cincinnati and Jeff Ruby's Carlo & Johnny, which are upscale steakhouse restaurants located in Cincinnati, Ohio and Montgomery, Ohio, respectively.

15. In each of these restaurants, Defendants' waitstaff employees have received a base pay that is less than the standard federal minimum wage. Defendants' waitstaff employees in these restaurants were generally paid at or slightly above the "service minimum wage" applicable in each state.

16. Defendants' waitstaff employees have not been permitted to retain all of their tips.

17. Instead, under a formula devised by management, waitstaff employees were required to "tip out" various other employees from the tips they receive from customers, including a percentage of their tips to management and other employees who do not regularly and customarily receive tips.

18. In each of Defendants' restaurants identified herein, there was a set percentage of tips that waitstaff employees are expected to pay to their managers and other employees.

19. At each of Defendants' restaurants identified herein, the waitstaff was required to complete a "tip out" sheet at the end of every shift. This document recorded the gross tips collected by each member of the waitstaff and the amount that each member of the waitstaff "tipped out" to the manager and other employees, as required by the Defendants' tip pool policy or practice. These "tip out" sheets were collected and stored by the employer.

20. The managers and other employees whom waitstaff are expected to tip out include general managers, as well as other managers. These managers and other employees are not traditionally tipped employees.

21. The managers and other employees whom waitstaff are expected to tip out include those who have control over the day-to-day operations of restaurants, including but not limited to, supervisory and hiring authority, and who may be classified as “employers” under the FLSA.

22. The FLSA requires employers to inform employees of the provisions of 29 U.S.C. § 203(m), which subsection governs the use of tip pools and tip credits. Defendants did not notify their waitstaff employees that they intended to take a “tip wage credit” against the minimum wage, that they intended to treat tips as satisfying part of their minimum wage obligation, nor did they explain anything to their waitstaff employees about a “tip wage credit” or what “tip wage credit” is.

23. Defendants’ managers informed waitstaff employees on a number of occasions that Defendants’ mandatory tip pool policy was prohibited by law for Defendant’s restaurants located in other states, but was not prohibited by law for the Defendants’ restaurants identified herein.

24. Defendants knew or should have known that their mandatory tip pool policy or practice was in violation of the FLSA. Defendants nevertheless maintained the mandatory tip pool policy or practice throughout their restaurants identified herein until in or around August 2012.

25. Defendants improperly took a “tip wage credit” against the minimum wage for their waitstaff employees at all times during which the tip pool policy or practice required “tipping out” of management and other employees who do not regularly and customarily receive tips.

26. Because Defendants were not entitled to a “tip wage credit,” Defendants’ waitstaff employees were paid less than the minimum wage as required by the FLSA.

27. Defendants' conduct, as described herein, was the direct and proximate cause of economic damage to Plaintiffs Mr. Lapinski, Mr. Hamel, Mr. Kende and other similarly situated employees.

28. Defendants' conduct, as described herein, was knowing and willful.

V. CAUSES OF ACTION

COUNT ONE: VIOLATION OF THE FLSA

29. Plaintiffs reiterate and incorporate by reference all of the preceding paragraphs as if fully rewritten herein.

30. Defendants' policy or practice of requiring waitstaff employees to participate in an invalid tip pool and in failing to allow these employees to retain all of their tips constitutes a violation of 29 U.S.C. § 203(m), which requires that all tips received by an employee be retained by the employee.

COUNT TWO: VIOLATION OF THE FLSA

31. Plaintiffs reiterate and incorporate by reference all of the preceding paragraphs as if fully rewritten herein.

32. Defendants' policy or practice of requiring waitstaff employees to "tip out" managers and other employees with control over day-to-day operations, including but not limited to, supervisory and hiring authority, constitutes a violation of 29 U.S.C. § 203(m), which limits the pooling of tips to individuals who customarily and regularly receive them.

COUNT THREE: VIOLATION OF THE FLSA

33. Plaintiffs reiterate and incorporate by reference all of the preceding paragraphs as if fully rewritten herein.

34. Defendants' failure to provide any notice regarding their intention to take a "tip wage credit" constitutes a violation of 29 U.S.C. § 203(m), which requires an employer to inform employees of the provisions of that subsection.

COUNT FOUR: VIOLATION OF THE FLSA

35. Plaintiffs reiterate and incorporate by reference all of the preceding paragraphs as if fully rewritten herein.

36. Defendants' taking of a "tip wage credit" was improper. As a result, Defendants failed to pay waitstaff employees the required minimum wage. This constitutes a violation of 29 U.S.C. § 203(m), which requires employees to be paid no less than the minimum wage.

COUNT FIVE: WILLFUL VIOLATION OF THE FLSA

37. Plaintiffs reiterate and incorporate by reference all of the preceding paragraphs as if fully rewritten herein.

38. At times, Defendants' managers represented to their waitstaff employees that the tip pools at their restaurants were permitted by law.

39. Defendants' statements were false.

40. Defendants knew their policy and practice of requiring waitstaff employees to participate in a mandatory tip pool that included the "tipping out" of managers and other employees not customarily and regularly tipped was in violation of the FLSA or Defendants should have inquired further into whether said policy and practice was in violation of the FLSA and failed to make adequate further inquiry.

41. As a consequence, said policy and practice was willful in nature.

COUNT SIX: UNJUST ENRICHMENT

42. Plaintiffs reiterate and incorporate by reference all of the preceding paragraphs as if fully rewritten herein.

43. Defendants' practice of misappropriating a portion of Plaintiffs Mr. Lapinski's, Mr. Hamel's, Mr. Kende's, and other similarly situated employees' tips to meet its own salary obligations to managers and other employees was inequitable and constitutes unjust enrichment under Ohio law.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Robert Ryan Lapinski, Jason Hamel and Steven Kende, on behalf of themselves and all other persons similarly situated, known and unknown, request that this Court enter the following relief:

1. Opportunity to notify other similarly situated waitstaff employees to opt-in to this action pursuant to 29 U.S.C. § 216(b);
2. Restitution for tips that Defendants' waitstaff employees have not been permitted to retain;
3. Restitution for the portion of the minimum wage that Defendants' waitstaff employees have not received in base pay;
4. Liquidated damages pursuant to 29 U.S.C. § 216(b);
5. Attorneys' fees and costs;
6. Any other relief in law or equity to which Plaintiffs may be entitled.

Respectfully submitted,

BECKMAN WEIL SHEPARDSON LLC

/s/ Sarah C. Leyshock

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*Trial Attorneys for Robert Ryan Lapinski, Jason
Hamel, Steven Kende and all other similarly
situated individuals*

JURY DEMAND

Plaintiffs Robert Ryan Lapinski, Jason Hamel and Steven Kende demand a trial by jury
for all issues of fact in connection with this Complaint.

/s/ Sarah C. Leyshock

Sarah C. Leyshock (#0081695)